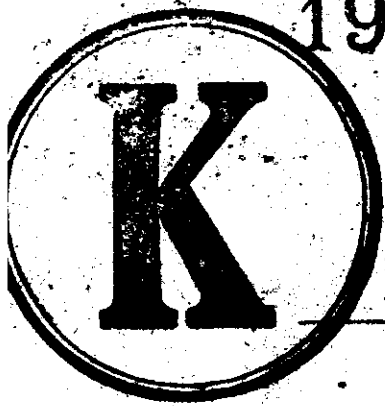


1951

File No. 0. Explosives/51



P 10 E

Legal Dept.

A BRANCH

Subject:—

Opinions under Explosive  
Substances Act, 1908.

File No. 0. Explosives/51

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|            | 0.Explosives/1951.                      | Opinions under<br>Explosive Substances<br>Act, 1908.                                                                                                                                                                                                                                                                                                                                                         |        |
| 1.         | R.I.No.1306/20-1-51.<br>O.No.202/3-2-51 | Questions: (1) whether<br>the Central Government<br>can delegate its power<br>to any other authority,<br>the right conferred by<br>section 7 of the<br>Explosive Substances<br>Act, 1908 in absence of<br>the express words to that<br>effect in the section or<br>in the Act in question<br>and<br>(2) if so, under what<br>Act, provisions of law or<br>rule can the delegation of<br>powers be supported. |        |
| 2.         | O.No.16520,<br>dt. 18-10-51.            | Re: consent order giving<br>consent to the trial of<br>person concerned for the<br>offences under sections<br>4(b) and 5 of the<br>Explosive Substances<br>Act, 1908.                                                                                                                                                                                                                                        |        |
| 3.         | O.No.17253,<br>dt. 1-11-51.             | Re: consent order giving<br>consent to the trial of<br>person concerned for the<br>offences under the<br>explosive substances Act,<br>1908.                                                                                                                                                                                                                                                                  |        |
| 4.         | O.No.20746,<br>dt.29-12-51              | Re: grant of sanction for the<br>prosecution of a person for<br>offences under section 4(b)<br>or section 5 of the<br>Explosive Substances Act,<br>1908.                                                                                                                                                                                                                                                     |        |

L.D.  
1306, dated 20-1-51.

x

x

x

x

Sub~~ss~~.

Please see order No.S.D.667/10433 dated 23-6-1950 by which consent is given to the trial of Rangarao Dyanu Nikam under section 4(b) and 5 of the Explosive Substances Act, 1908 in exercise of the functions of the Central Government under section 7 of the said Act entrusted to the Government of Bombay by Government of India H.D.Notification No.51/12/36-Poll. dated 29-3-1938. The defence ~~and~~ on behalf of the accused in the case has pointed out that section 7 gives power only to the Central Government to consent to the ~~prosecutions~~ prosecutions under the Act and has raised the following questions:

(i) whether the Central Government can delegate its power to any other authority, the right conferred by section 7 of the Explosive Substances Act, 1908 in absence of the express words to that effect in the section or in the Act in question and

(ii) if so under what Act, provisions of law or rule can the delegation of powers be supported.

H.D. is of the view that these functions were entrusted to the Provincial Government under section 124 of the Government of India Act, 1935 and therefore the delegation of

functions ....

functions was properly made. The R.L.A. is requested to advise very urgently.

2. It appears that the Government of India issued a notification under sub-section (1) of section 124 of the Government of India ~~Amendment~~ Act, 1935 by which it entrusted to all Provincial Governments with their consent the functions of the Central Government under section 7 of the Indian Explosives Act, 1908. <sup>In</sup> ~~The~~ view of the special provision made in the Government of India Act for entrustment of functions by the Central Government to the Provincial Governments, the Government of India Notification is not ultra vires. (See Hadibandhu Pradhan vs. King Emperor 24 Patna 699). This notification continues to be in force even after 26th January 1950 in view of the provisions of articles 258 and 372 of the Constitution.

Sd. P.S. Nadkarni  
23/1

D.S. (Cr.)

MRP.  
25/8/56.

Office of the R.L.A.

The point raised by the defence can be met on the following ground:-

Section 7 of the Explosive Substances Act, 1908, as adapted by the Government of India (Adaptation of Indian Laws) Order, 1937, provides as follows:-

"No court shall proceed to the trial of any person for an offence against this Act except with the consent of the Central Government."  
Before the said section 7 was so adapted, the wording was as follows:-

"No court shall proceed to the trial of any person for an offence against this Act except with the consent of the local Government or the Governor General in Council."

It is true that the words "Local Government or" were repealed by the Government of India (Adaptation of Indian Laws) Order, 1937. But as the item "explosive" was shown in the Federal Legislative List under serial No.30 in the Seventh Schedule to the Government of India Act, 1935, the words "the Governor General in Council" were substituted by the words "the Central Government". After 1st April 1937 the power to give consent therefore devolved on the Central Government and in virtue of the provisions of section 124(1) of the Government of India Act, the Central Government issued an Order under the Government of India, Home Department(Poll) No.51/12/36 dated the 29th March 1938, entrusting  
to Provincial ...

to Provincial Governments, with their consent, the functions of the Central Government under section 7 of the Explosive Substances Act, 1908. Article 258(1) of the Constitution provides that "Notwithstanding anything in this Constitution, the President may, with the consent of the Government of a State, entrust either conditionally or unconditionally to that Government or to its officers, functions in relation to any matter to which the executive power of the Union extends". The Government of India Act, 1935 has no doubt been repealed by article 395 of the Constitution; but para 26 of the Adaptation of Laws Order, 1950 provides that —

"Where any rule, order or other instrument was in force under any provision of the Government of India Act, 1935, or under any Act amending or supplementing that Act, immediately before the appointed day, and such provision is re-enacted with or without modifications in the Constitution, the said rule, order or instrument shall, so far as applicable, remain in force with the necessary modifications as from the appointed day as if it were a rule, order or instrument of the appropriate kind duly made by the appropriate authority under the said provision of the Constitution, and may be varied or revoked accordingly."

The provisions of section 124(1) of the Government of India Act, 1935, having been re-enacted in article 258(1) of the Constitution of India, the Government of India, Home Department (Pol.) Notification No.51/12/36, dated 29th March 1938, shall, by virtue of the provisions of para.26 of the Adaptation of Laws Order, 1950, remain in force with the necessary modifications as if it were a

notification ...

notification of the appropriate kind made by  
the appropriate authority under the provisions of  
article 253(1) of the Constitution.

Sd. P.M.Lad  
Remembrancer of Legal Affairs.

U.R. to H.D., No. 2102, dated the 3rd Feb. 1951.

MRP.  
25/6/56.

20530,dt. 4-10-51.

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Legal Department.

A revised draft Order is forwarded.

Sd. M.D.Mirchandani

Additional Secretary to Government

U.R.to H.D.,No.16520, dated the 18th October 1951.

HRP.  
25/6/56.

O R D E R.

Home Department (Political).

Bombay Castle,

1951.

No.S.D.667/13292.- Whereas it appears to the Government of Bombay that on or about 30-1-51, one Shri Davayat Dana of Khambhalia, Taluka Dhari, District Amalgaon, had unlawfully and maliciously in his possession or under control in house at Khambhalia explosive substances, namely, gunpowder and potassium chlorate with intent by means thereof to endanger life or cause serious injury to the property in India;

Now, therefore, in exercise of the functions of the Central Government under section 7 of the Explosive Substances Act, 1908 (VI of 1908), entrusted to the Government of Bombay by the Government of India Notification No.15/12/36-Poll, dated the 29th March 1938, the Government of Bombay is hereby pleased to give its consent to the trial of the said Davayat Dana for offences under sections 4(b) and 5 of the said Act.

By order of the Governor of Bombay,

Secretary to the Government of Bombay,  
Home Department.

Legal Department.

The recitals in the preamble of the draft order would cover an offence under section 5 also, but there is no objection to adding to the preamble by way of abundant caution the portion at 'A' on page 13 as suggested by the Home Department.

Sd. B.D.Mirchandani

Additional Secretary to Government.

U.R.to H.D., No.17253, dated the 1st November 1951.

MRP.  
25/6/56.

-13-

One Shri K.M.Fakatkar of Talegaon Dabhade reported to the Police on 5th September 1951 that somebody had placed a shell (25 pounder) near the rear door of his house. The Police came and attached the shell. Shri Fakatkar suspected Shri T.P.Bezekar as the person who had placed the shell. The Police accordingly have arrested Shri Bezekar and have, through the District Magistrate, Poona, sought for sanction under section 7 of the Explosive Substances Act, 1908, to prosecute Shri Bezekar for offence under sections 4(b) and 5 of that Act.

2. Section 4(b) of the Act punishes the making of an explosive substance or the possession by or control of it with a particular intent. Section 5 punishes the making of an explosive substance or the conscious possession or control of it under specified circumstances. The evidence in this case, as summarized in the report of Police Sub Inspector, Vadgaon, Maval, dated 6th November 1951 to the District Magistrate, Poona, does not establish such making or such possession or control of the shell by the accused T.P.Bezekar. The shell was admittedly not found with him. The allegation was that he had put it outside the door of Shri Fakatkar's house in order to do Shri Fakatkar harm. The only evidence to prove this is that Shri Bezekar is on bad terms with Shri Fakatkar on account of one Shrimati Vithabai D. Fakatkar and that Shri Bezekar had threatened Shri Fakatkar that he would harm ~~with~~ him with a bomb. The

evidence ...

evidence relating to threats consists of letters alleged to have been written by Shri Bezekar under an assumed name. These letters have not yet been proved to be in the handwriting of the accused. But assuming that they are proved to be in his handwriting the letters by themselves will not go to prove the making of this explosive or the possession of it.

3. In the circumstances, there is not sufficient evidence to justify the granting of a sanction for the prosecution of Shri Bezekar for offences under section 4(b) or section 5 of the Act.

Sd. J.R.Dhurandhar  
29/12

Remembrancer of Legal Affairs.

U.R.to H.D.,No.20746, dated the 29th December 1951.

MRP.  
25/6/56.